

REMARKS

Favorable reconsideration of the present application is respectfully requested. Claims 6, 7 and 16-19 are currently pending in the application. Claims 1-5 and 8-15 have previously been canceled. The Amendment and remarks are believed to place all of the pending claims in condition for allowance.

Claims 6, 7 and 16-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,725,120 to Ramsey et al. ("Ramsey") as applied to Claims 1, 6 and 7 above, and further in view of U.S. PG Publication No. 2002/0050493 to Ball et al. ("Ball"). Applicant respectfully traverses the rejection.

Regarding Claim 6, Claim 6 recites, *inter alia*:

"reforming the seal surface to a shallower angle than the initial angle of the seal surface down to and including 0° after the processing step."

In addition to the reasons provided in the Amendment filed on June 28, 2010, and as the Examiner admits, Ramsey does not teach or suggest "reforming the seal surface to a shallower angle than the initial angle of the seal surface down to and including 0° after the processing step", as recited in Claim 6. Likewise, Ball fails to teach or suggest "reforming the seal surface to a shallower angle than the initial angle of the seal surface down to and including 0° after the processing step", as recited in Claim 6.

The Examiner is incorrect in stating that it would have been obvious to add a step which flattens the annular flange of Ramsey. First, it is noted that the flanges ("sealing surfaces") of both Ramsey and Ball are rigid. Second, there is absolutely nothing in either Ramsey or Ball to suggest that a step could or would even have been considered to flatten the [rigid] flange when already the foil itself is flexible according to internal pressure. In fact, **none** of the prior art cited for this application discloses or suggests

“reforming” the seal surface. As previously stated, Applicant respectfully submits that the combination of Ramsey and Ball is improper because the Office Action continues to rely on information gleaned solely from Applicant’s specification. MPEP § 2142 states that “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art” (emphasis added by Applicant). As noted in the outstanding Office Action ““any judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and **does not include knowledge gleaned only from applicant’s disclosure**, such a reconstruction is proper”” (see, Office Action page 7, quoting *In re McLaughlin*, 443 F.2d 1392, 1395 (CCPA 1971), (emphasis added by Applicant)). However, in the present invention, Applicant believes that such a reconstruction is not proper.

In the present case, the Office Action relied on the erroneous allegation that, at the time of the invention, one of ordinary skill in the art would chose “to benefit from the conditions from the teachings of Ball et al. and Ramsey would immediately find it necessary to reform the angle from that of Ramsey to that of Ball et al. as an obvious transition from one known configuration to another” to allegedly support the combination of Ramsey and Ball. However, reforming the seal angle from that of Ramsey to the seal angle of Ball is absent from the cited art and is only present in Applicant’s specification in paragraph [0016]. In the cited section of the specification, it is discussed that the initially inclined seal surface angle of form 10° to 60° degrees may be reformed to a shallower seal surface angle including 0°. In fact, a stated goal in Ball is to prevent the full can end from buckling, reversing or deflecting excessively under the stresses applied

by the internal pressure from the contained beverage (*see*, Ball, paragraph [0008]), which goal would be compromised by the introduction of metal fatigue and the attendant weakening around the seal surface caused by the reforming of the seal surface. As a result, the reformed can end would likely be more susceptible to reversing under the pressure contained in the beverage. Due to the lack of any disclosure or teaching of the reforming the seal surface to a shallower angle in the cited art and the fact that the reforming the seal surface to a shallower angle is only present on the record in Applicant's specification, it logically follows that the step of reforming the seal surface angle to a shallower angle down to and including 0° has been improperly gleaned from Applicant's own specification and that the combination of Ramsey and Ball is an exercise of impermissible hindsight. Thus, it is clear that the "reforming" is only "obvious" if impermissible hindsight is used and it is respectfully submitted that the combination is improper. As a result, there is no teaching or suggestion of "reforming" the seal surface, as recited in Claim 6 and one of skill in the art would not be motivated to perform the reforming as recited in Claim 6, absent the use of impermissible hindsight construction using the teachings of the present application.

Therefore, Ramsey and Ball, either alone or in combination fail to disclose "reforming the seal surface to a shallower angle than the initial angle of the seal surface down to and including 0° after the processing step", as recited in Claim 6. Accordingly, the Examiner is respectfully requested to formally withdraw the section 103 rejection of Claims 6 and 7.

Regarding Claim 16, Claim 16 uses similar terminology to Claim 6, by reciting: "reducing the seal surface angle to a shallower angle than the initial angle of the seal surface after the processing step." Contrary to the Examiner's assertion, Ramsey does not

teach or suggest “reducing the seal surface angle to a shallower angle than the initial angle of the seal surface after the processing step.”

Regarding Claim 16, the Examiner is again incorrect in stating that Ramsey in view of Ball discloses reducing the seal surface angle to a shallower angle than the initial angle of the seal surface after the processing step. Only hindsight could lead one of skill in the art to this conclusion and that is not permissible. It takes more than ordinary skill to have the insight required to achieve the invention of each of the claims. Ramsey and Ball are solving different problems, so simply because Ramsey and Ball disclose different angles does not lead one of ordinary skill to consider a metal reforming step, given all of the associated problems that it can entail, or to combine the two prior art documents. It is noted that the Ball patent is not even directed to controlling in-can pressure during thermal processing. Instead, the can body of the Ball patent is filled with a carbonated beverage.

Therefore, in addition to the above arguments, the same arguments used in support of the non-obviousness of Claim 6 also apply to Claim 16 and dependent Claims 17-19 that depend therefrom. Accordingly, Applicant believes that Claims 16-19 also patentably distinguish over Ramsey and Ball and requests that the Examiner formally withdraw the rejection of Claims 16-19 and issue a Notice of Allowance for all of the currently pending claims.

Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicant's representative at the telephone number listed below to schedule an Interview.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T4515-16168US01) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be

required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

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